

REMARKS

Applicant respectfully requests further examination and reconsideration in view of the above amendments and arguments set forth fully below. Claims 1-4 and 6-23 were previously pending in the instant application. Within the Office Action, Claims 1-4 and 6-23 have been
5 rejected. By way of the above amendments Claims 1, 13 and 21 have been amended and Claim 6, 19 and 20 have been canceled. Accordingly, Claims 1-4 and 7-18 and 21-23 are now pending in this application.

Rejections Under 35 U.S.C. § 102(e)

10 Within the Office Action, Claims 1, 3-4, 7-8, 10 and 12 have been rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Publication No. 2004/0062411 A1 to Retchin et. al (hereafter "Retchin"). Applicant contends that the rejection of Claims 1, 3-4, 7-8, 10 and 12 under 35 U.S.C. § 102(e) as being anticipated Retchin are moot in view of the above amendment.

Specifically, the independent Claim 1 has been amended to recite an output means that
15 includes a water resistant ear plug or speaker unit with a sealed diaphragm and a cone for inserting into a user's ear canal.

In contrast to the teaching of Retchin, the presently claimed invention provides for delivery of the of audio digital media to a user's ear or ears in an aquatic environment, while simultaneously plugging the user's ear or ears. The system of Retchin requires that the user's
20 ear or ears are plugged separately from the bone conduction transducer to provide high quality sound transmission in an aquatic environment. The features of resistant earphones with a cone and sealed membrane transducer for inserting into a user's ear canal are neither taught nor suggested by the teachings of Retchin. For at least these reason the independent Claim 1 is allowable over the teaching of Retchin.

25 Claims 3-4, 7-8, 10 and 12 are all dependent on the independent Claim 1. As described above, the independent Claim 1 is all allowable over the teachings of Retchin. Accordingly, Claims 3-4, 7-8, 10 and 12 are also all allowable as being dependent on an allowable base claim.

Rejections Under 35 U.S.C. § 103(a)

Within the Office Action, Claims 2, 6 and 13-23 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Retchin in view U.S. Publication No. 2004/0160572 AI to Jannard (hereafter "Jannard") and Claims 9 and 11 have both been rejected under 35 U.S.C. § 103 (a) as being unpatentable over Retchin.

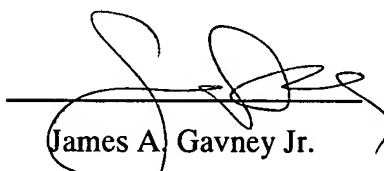
Jannard has been characterized previously. In summary Jannard in no way suggesting or teaching a device that is to be used in an aquatic environment. Further Jannard fail to teach or suggest any elements of device that are required to make the device operable underwater, such as a water resistant speaker or water resistant head phones with the sealed diaphragms and cone structures for inserting into a canal of a user's ear, such as currently recited in the independent Claims 1, 13 and 21.

Claims 6, 19 and 20 have been canceled. Claim 6 depends from the independent Claim 1; Claims 14-18 all depend from the independent Claim 13; and Claim 22 and 23 both depend from the independent Claim 21. As described above, the independent Claims 1, 13, and 21 are all allowable over the teachings of Retchin, Jannard and their combination. Accordingly, Claims 2, 14-18, 22 and 23 are also all allowable as being dependent on allowable base claims.

For the reasons given above, Applicants respectfully submit that Claims 1-4 and 7-18 and 21-23 are now in a condition for allowance, and allowance at an early date would be appreciated. Should the Examiner have any questions or comments, the Examiner is encouraged to call the undersigned at (650) 960-1400 to discuss the same so that any outstanding issues can be expeditiously resolved.

Respectfully submitted,
JAG PATENT SERVICES LLC

Dated: 9/29/08

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CERTIFICATE FOR MAILING (37 C.F.R. § 1.8(a))

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